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United States Environmental Protection Agency

Region III

In the Matter Of:

NVF Company
Kennett Square, Pennsylvania

Respondent

Proceeding under Section 106(a) of the
Comprehensive Environmental Response,
Compensation, and Liability Act of 1980
(42 U.S.C. § 9606(a)), as amended by
the Superfund Amendments and Reauthori-
zation Act of 1986, Pub. L. No. 99-499,
100 Stat. 1613 (1986).

Docket No: EL-87-20-DC

CONSENT AGREEMENT AND ORDER

The following Consent Agreement and Order by and between the United States Environmental Protection Agency ("EPA") and NVF Company ("NVF") is issued pursuant to the authority vested in the President of the United States of America by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. No. 99-499, 100 Stat. 1613, and delegated to the Regional Administrators of EPA. This Order pertains to property located in the borough of Kennett Square, Chester County, Pennsylvania. The property will hereinafter be referred to as the "NVF site" or "the site".

The actions taken pursuant to this Order shall be consistent with the National Oil and Hazardous Substance Contingency Plan, 40 C.F.R. §300.65 ("NCP"). Notice of the issuance of this Order has been given to the Commonwealth of Pennsylvania.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

EPA has concluded that all determinations necessary for the issuance of this Order pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606, have been made. EPA finds the following:

1. The Respondent, NVF Company, is a corporation organized and existing under the laws of the State of Delaware.
2. The NVF site is located at the corner of Mulberry and Lafayette Streets, Kennett Square, Pennsylvania and encompasses an area of 26.13 acres.
3. The NVF site has been owned and operated by NVF from the early 1920's to the present for the manufacture of composite materials and industrial laminates.
4. This Order pertains to three areas; the NVF facility, the swale leading from the site, and the unnamed tributary to the West Branch of the Red Clay Creek.
5. Analysis of fish collected from the Red Clay Creek by the U.S. Fish and Wildlife Service on August 16, 1982 revealed the presence of Poly-chlorinated Biphenyls ("PCBs") in excess of the Food and Drug Administration's Action Level for this substance in fish flesh.
6. On January 27, 1983, and subsequent dates, the Pennsylvania Department of Environmental Resources ("PA DER") collected sediment and water samples from the West Branch of the Red Clay Creek at selected intervals from downstream to upstream. Analysis of these samples indicated that the area in the vicinity of NVF's Kennett Square facility was a source of the PCB contamination in the West Branch of the Red Clay Creek.

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7. On May 9, 1983, PA DER inspected NVF and found PCBs in the non-contact cooling water of outfall 001 and in the sediment of the swale which extends in a southerly direction into the unnamed tributary of the West Branch of the Red Clay Creek. Based upon analyses performed by E.H. Richardson Associates, Inc., NVF determined that the source of the PCB contamination in outfall 001 was residue in the number seven press pit. For several years during the 1960's a heat transfer fluid containing PCBs was used in press number seven.
8. In December of 1983, all surface residues including sludges and debris were removed from the pit. Although this source of PCBs has been removed, there is some evidence that PCB contamination in the swale and unnamed tributary to the West Branch of the Red Clay Creek remains.
9. A site assessment was performed by the EPA Region III Field Investigation Team ("FIT") on February 12, 1986, in accordance with the NCP 40 C.F.R. §300.64. Sampling conducted at that time has documented the presence of PCBs in the swale sediment offsite in concentrations ranging from 44 ppm to 11,000 ppm.
10. The NVF site is situated in a moderately populated rural area. An adjacent mushroom farm is bisected by the south westerly flow of the unnamed tributary. This unnamed tributary flows into the West Branch of the Red Clay Creek.
11. Poly-chlorinated Biphenyls ("PCBs") found at the NVF site are hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).
12. The actual release of PCBs from the NVF facility into the swale has created a significant health threat due to the actual or potential release of PCBs from the swale into the unnamed tributary to the West Branch of Red Clay Creek.

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13. The NVF site is a facility as defined in Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

14. The Respondent is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. §9601(21).

15. The past, present, and potential migration of hazardous substances from the site constitutes an actual or threatened "release" as defined in section 101(22) of CERCLA, 42 U.S.C. §9601(22).

16. EPA has concluded that the Respondent is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. §9607(a) and is, therefore, liable for carrying out the provisions of this Order and for the payment of non-performance assessments.

DETERMINATION

17. EPA has determined that there may be an imminent and substantial endangerment to the public health, welfare, or the environment as a result of the release or threat of release of hazardous substances from the site.

18. EPA has determined that the actions set forth below must be taken to protect public health, welfare, or the environment.

RESPONDENT'S RESERVATION OF RIGHTS

19. The foregoing findings have been made by EPA. By consenting to this Order, and agreeing to comply with the terms and conditions of this Order, Respondent does not admit or concede the correctness of these findings.

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This Order, and compliance with the terms hereof by Respondent, does not constitute, and shall not be construed in any way, as an admission of any fact or conclusion of law (or of the applicability or inapplicability of any law) or an admission of liability on the part of Respondent or as a waiver of any defense by Respondent. Respondent reserves the right to challenge these findings in this or in any other proceeding in which they may arise. However, Respondent specifically agrees not to contest the authority or the jurisdiction of the Regional Administrator of EPA Region III, to issue this Order, and also agrees not to contest the terms of this Order in any action to enforce its provisions. It is further the intention of the parties hereto that neither the terms of this Order, including the findings made herein, nor the act of performance hereunder, shall be used against Respondent as a collateral estoppel or res judicata in any other case with EPA, with any other governmental agency, or with any other person or entity.

WORK TO BE PERFORMED

20. This Order shall apply to and be binding upon Respondent, its agents, successors, and assigns.

21. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a), Respondent shall commence performance of the following measures within the time periods specified. All measures described below shall be completed within 90 calendar days of the effective date of this Order.

22. Within 30 days of the effective date of this Order, Respondent shall retain a qualified contractor to perform the necessary sampling and extent of contamination study which addresses the objectives of the attached Sampling Plan (Attachment A) which is hereby incorporated by

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reference. Prior to the initiation of site work, Respondent shall notify EPA in writing regarding the identity of the person or persons who will be primarily responsible for, and any contractor and/or subcontractor to be used in carrying out the terms of this Order. EPA may disapprove the use of any supervisory personnel, contractor and/or subcontractor within seven (7) days of notification, if EPA believes they are not qualified to perform the response work. In the event of a disapproval, Respondent shall notify EPA within fifteen (15) days of the person, contractor or subcontractor who will replace the one whom EPA disapproved.

23. Within 15 days of approval of the contractor by EPA, Respondent shall submit to EPA for approval a detailed Work Plan that complies with the requirements of the aforementioned Sampling Plan.

24. EPA shall approve or disapprove this Work Plan within 7 days of its submittal from the Respondent. In the event of disapproval, EPA shall specify deficiencies in writing. Within 15 days of the receipt of EPA disapproval, Respondent shall submit a revised Work Plan that responds to the specified deficiencies. If the Respondent and EPA can not agree upon the contents of the work plan, the dispute shall be resolved in accordance with paragraph 47.

25. Within 30 days of approval of the Work Plan by EPA, Respondent shall perform the sampling required by the plan and submit the results to EPA for approval.

26. Within 15 days of completion of the action called for in paragraph 25, Respondent shall submit to EPA a report stating that the actions set

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forth in the Work Plan have been completed and describing how the actions were carried out.

27. Upon receipt of the report, EPA shall perform a final inspection to determine whether the Respondent has complied with the terms of this Order, and shall advise Respondent within 30 days as to whether the provisions of this Order have been satisfied.

28. Respondent shall advise EPA's designated Project Coordinator ("PC") of any sampling analysis or monitoring results within seventy-two (72) hours of receiving the results.

29. Respondent shall begin to implement the plan outlined in Paragraphs 22-26 above, within seventy-two (72) hours of approval of the Work Plan, or approval with modifications by EPA's PC.

30. In the event that the Respondent fails or refuses to comply with the requirements of Paragraphs 20 through 28, EPA may undertake such measures in lieu of Respondent, and take any other measures authorized by law which EPA determines may be necessary to protect public health, welfare, or the environment and seek reimbursement for its costs.

During the course of the Respondent's actions taken pursuant to this Order, EPA's PC may halt site activity if there is a threat to public health, welfare, or the environment as described in 40 C.F.R. §300.65.

31. Documents, including reports and other correspondence, required to be submitted by this Consent Order shall be sent by first class or priority mail to the following:

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- a. Documents to be submitted to EPA should be sent to:

Harry Daw (3HW14)
CERCLA Removal Enforcement Section
U.S. EPA, Region III
841 Chestnut Building
Philadelphia, PA 19107

- b. Documents to be submitted to the Commonwealth of Pennsylvania should be sent to:

Cynthia Steele
Bureau of Water Quality Management
Pennsylvania Dept. of Environmental Resources
1875 New Hope Street
Norristown, PA 19401

- c. Documents to be submitted to NVF Company should be submitted to:

William Witt, P.E.
NVF Company
Operating Headquarters
P.O. Box 68
Yorklyn, DE 19736

Harley Trice, Esq.
Reed, Smith, Shaw, & McClay
P.O. Box 2009
Pittsburgh, PA 15230

DESIGNATED PROJECT COORDINATORS

32. On or before the effective date of this Consent Order, EPA and Respondent shall each designate a Project Coordinator ("PC"). Each PC shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Respondent and EPA and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the Project Coordinators. EPA and Respondent each has the right to change its respective PC. Such a change shall be accomplished by notifying the other party in writing at least five (5) calendar days prior to the change. The EPA PC shall have the authority to halt, modify, conduct, or direct any tasks required by this Consent Order or portion thereof or to take other necessary response actions if there is a threat to the public health or welfare

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or the environment as described in 40 C.F.R. §300.65. This authority also includes the authority to approve and/or direct minor modifications to the Work Plan that may become necessary as the work progresses. In the event that work is halted or changed under order of the EPA PC pursuant to this paragraph, the schedule for completion of the work set forth in the Work Plan shall be extended to the extent of the delay. The EPA PC will provide reasonable notice to Respondent of his intent to invoke the provisions of this paragraph. In the case of the EPA PC's intent to conduct or direct any work at the site, he shall provide at least 72 hours advance notice to Respondent. Respondent shall have the opportunity, prior to the EPA PC's conducting or directing of any work at the site, to meet and confer with the EPA PC, and other EPA staff regarding the EPA PC's intent to invoke this paragraph and to attempt to resolve any dispute between the Respondent and the EPA PC with regard to same. Nothing in this paragraph shall limit the EPA PC's authority to order a halt to the work or to conduct other response actions in the case of an emergency situation presenting a threat to public health or welfare or the environment as set forth in 40 C.F.R. §300.65(b). Respondent shall not be deemed to have consented to any response actions not enumerated in this Order.

SAMPLING, ACCESS, AND DATA/DOCUMENT AVAILABILITY

33. Respondent shall make the results of all sampling and/or tests or other data generated by Respondent, or on behalf of Respondent, with respect to the implementation of this Order, available to EPA and PA DER and shall submit these results in weekly progress reports. EPA will make available to Respondent the results of sampling and/or tests or other data similarly generated by EPA.

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34. At the request of EPA, Respondent shall allow split or duplicate samples to be taken by EPA and/or its authorized representatives, of any samples collected by Respondent pursuant to the implementation of this Order. Respondent shall notify EPA not less than forty-eight (48) hours in advance of any sample collection activity.

35. EPA and its authorized representatives shall have the authority to enter and freely move about the NVF Site at all reasonable times for the purpose of, inter alia: inspecting records, operating logs, and contracts relating to the site; reviewing the progress of Respondent in carrying out the terms of this Consent Order; conducting such tests as EPA deems necessary; and verifying the data submitted to EPA by Respondent. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order. Nothing herein shall be interpreted as limiting the inspection authority of EPA under CERCLA and other federal law. All parties with access to the NVF site pursuant to this paragraph shall comply with all approved health and safety plans. To the extent that property included in the sampling and removal area is owned or controlled by parties other than Respondent, the Respondent will seek access agreements from the present owners. Such agreements shall provide reasonable access for EPA and its representatives. In the event Respondent cannot obtain such access agreements, EPA shall be notified immediately and EPA shall take the necessary steps to gain access.

36. Respondent may assert a confidentiality claim pursuant to 40 C.F.R. §2.203(b) covering part or all of the information requested by this Order. Such an assertion must be adequately substantiated at the time

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the assertion is made. Analytical data may not be claimed as confidential by Respondent. Information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to Respondent.

37. In the event that Respondent wishes to perform any sampling in areas other than those specified in the Sampling Plan, Respondent shall notify EPA of the location and number of samples to be taken. In addition, EPA may, at its discretion, aid Respondent in gaining access to areas to be sampled if access has been previously denied to Respondent.

QUALITY ASSURANCE

38. The Respondent shall use Quality Assurance/Quality Control practices and procedures, including chain-of-custody procedures, in accordance with guidance provided in "EPA NEIC Policies and Procedures Manual," May 1978, revised June 1985, EPA-330-9/78-001-R, attached hereto as Attachment B, and "Interim Guidelines and Specifications for preparing Quality Assurance Project Plans", December 1980, QAMS-005/80, while conducting all sample collection and analysis activities required by this Consent Order. The Respondent shall consult with EPA in planning for, and prior to, all sampling and analysis required by the approved Work Plan.

FORCE MAJEURE

39. Any delay by Respondent that results from circumstances beyond the control of the Respondent that cannot be overcome by due diligence on the Respondent's part, shall not be deemed a violation of its obligation

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under this Order, nor shall it make the Respondent liable for the stipulated penalties contained in Paragraph 45 of this Order. To the extent a delay is caused by circumstances beyond the control of the Respondent, the time for performance hereunder shall be extended for a period equal to the delay directly resulting from such circumstances or such longer time as may be necessary to overcome the effects of the cause, using due diligence. Increased costs of performance of the terms of this Order or changed economic circumstances shall not be considered circumstances beyond the control of the Respondent.

40. The Respondent shall notify EPA as soon as possible of any delays in the performance of work or submission of documents required by this Order. Any delay or anticipated delay caused by circumstances beyond the control of Respondent that occurs or may occur in the performance of work or the submission of reports required by this Order shall be reported to EPA within seven (7) working days. Such notification shall be in writing and shall describe fully the nature of the delay, the actions that will be taken to mitigate further delay, and the timetable by which the actions in mitigation of delay will be taken. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay.

41. Failure of the Respondent to comply with the notice requirements of paragraph 40 shall constitute a waiver of the Respondent's right to invoke the benefits of paragraph 39.

42. The Respondent shall have the burden of proving that the delay was caused by circumstances beyond the control of the Respondent and that the Respondent took all reasonable measures to avoid or minimize the delay. In the event that EPA and the Respondent cannot agree that any delay in

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the achievement of the requirements of this Order, including the failure to submit any report or document, has been or will be caused by circumstances beyond the control of Respondent, the dispute shall be resolved in accordance with Paragraph 47 below.

OTHER APPLICABLE LAWS

43. All actions taken under this Order shall be accomplished in a manner which complies with the requirements of all applicable local, state, and federal laws and regulations.

44. Respondent hereby waives any right to seek reimbursement of any costs pursuant to § 106(b) of CERCLA, 42 U.S.C. § 9606(b), for compliance with this Order. Nothing in this Order shall limit Respondent's ability to seek contribution from other Potentially Responsible Parties.

DELAY IN PERFORMANCE AND STIPULATED PENALTIES

45. Where there is a delay not excused by the Force Majeure section, for each week that the Respondent fails to submit a report or document or otherwise comply with the schedule requirements of this Consent Order, Respondent shall be liable upon demand to EPA in the amount of \$500.00 for each of the first two weeks or any portion thereof, and \$1000.00 for each week thereafter or any portion thereof as stipulated penalties under EPA's statutory authority. Checks should be made payable to the Hazardous Substances Superfund and addressed to:

EPA Superfund
P.O. Box 371003M
Pittsburgh, PA 15251

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The Respondent shall be excused from paying any stipulated penalties for failure to achieve the interim completion dates established in this Order and the Work Plan if the final date for completion of the measures required by this Order is achieved. Payment of stipulated penalties shall not relieve Respondent of the obligations and requirements of this Order or limit EPA's right to enforce this Order by seeking injunctive or mandatory relief or any other relief including seeking statutory fines of \$25,000.00 per day and other penalties provided by statute for willful violation, or refusal to comply with this Order.

EPA'S RESERVATION OF RIGHT

46. Notwithstanding any other provisions set forth herein, EPA reserves the right to take any appropriate action relating to the NVF site, including the right to seek monetary penalties, for any violation of law or this Order; to issue additional Orders under Section 106(a) of CERCLA, 42 U.S.C. §9606(a); to take necessary response action under Section 104(a)(1) of CERCLA, 42 U.S.C. §9604(a), in addition to those identified herein; and to institute suit for recovery of response costs pursuant to Section 107 of CERCLA, 42 U.S.C. §9607.

DISPUTE RESOLUTION

47. If the Respondent objects to any EPA notification of deficiency or disapproval, or any other action of EPA, it will notify EPA in writing within seven (7) calendar days. EPA and the Respondent will then have an additional fourteen (14) calendar days from receipt of that response to reach an agreement. If EPA determines that there is a "good faith" dispute, EPA may extend the time for completion of the work required by

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this Order by the amount of time required to resolve the dispute. If agreement cannot be reached on the issue within the fourteen (14) day period, EPA shall provide a written statement of its decision to the Respondent. In such situations, EPA and Respondent retain whatever rights to legal remedies and defenses, if any, otherwise available by law. Nothing in this paragraph shall be deemed to limit EPA's authority to order a halt to the work or to conduct other response actions in the case of situations presenting a threat to public health or welfare or the environment as set forth in 40 C.F.R. §300.65.

EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

48. The effective date of this Consent Order shall be the date on which it is signed by EPA. EPA shall provide the Respondent with immediate notice that the Order has been signed. This Consent Order may be amended by mutual agreement of EPA and Respondent. Such amendments shall be in writing and shall become effective on the date on which such amendments are signed by EPA.

49. No informal advice, guidance, suggestions or comments by EPA regarding reports, plans, specifications, schedules and other writing submitted by Respondent may be construed as relieving Respondent of its obligation to obtain formal approval when required by this Consent Order.

TERMINATION AND SATISFACTION

50. The provisions of this Order shall be deemed satisfied upon Respondent's receipt of written notice from EPA in accordance with paragraph 27 that it has demonstrated, to the satisfaction of EPA, that all of the terms of this Order have been completed.

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51. The undersigned representative of Respondent certifies that he or she is fully authorized by the Respondent to enter into the terms and conditions of this Consent Order, to execute this Consent Order, and to legally bind the Respondent to this Consent Order.

This Order will become effective upon signature by the Regional Administrator.

IT IS SO AGREED AND ORDERED:

UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY

DATE:

6/12/87

BY:

[Signature]

JAMES M. SEIF
REGIONAL ADMINISTRATOR
EPA, REGION III

Witness:

NVF COMPANY

BY:

William Witt

BY:

[Signature]

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NVF SITE, KENNETT SQUARE, PENNSYLVANIA
SAMPLING PLAN

The objectives of the sampling and hydrogeological study are to determine if any poly-chlorinated biphenyl contamination exists on NVF's property, the extent and avenues of migration of such contamination, the characterization of any horizontal or vertical ground water contamination, and the extent of such contamination, if it exists, in the vicinity of the NVF site in Kennett Square, Pennsylvania. Surface water, sediment, and fish tissue analyses performed by the Pennsylvania Department of Environmental Resources and the U.S. Environmental Protection Agency have shown that waterways adjacent to, and downstream from, the NVF property have significant levels of contamination from, among other substances, poly-chlorinated biphenyls.

A. In compliance with this Consent Order NVF shall:

1. Submit to EPA an onsite sampling plan to identify and quantify the extent of contamination in the following areas of the facility:
 - a. The number seven press pit area;
 - b. All pipes or conduits leading directly from the number seven press pit;
 - c. All other areas and avenues of potential migration on NVF's property that have historically utilized PCBs;
 - d. The storm water control basin;
 - e. The effluent outfall into the swale.
2. Submit to EPA an offsite sampling plan to identify and quantify the extent of contamination in the following offsite areas:
 - a. Five points along the unnamed tributary of the Red Clay Creek (swale);
 - b. At the confluence of the swale and the Red Clay Creek;
 - c. Two or more points upstream and downstream of the confluence of the swale and the Red Clay Creek.
3. Submit to EPA a site specific safety plan detailing, among other things, levels of protective clothing worn by workers on site, respiratory protection, decontamination procedures, and measures taken to limit access to work areas by non-essential personnel.

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2. Submit to EPA an off-site sampling plan to identify and quantify the extent of poly-chlorinated biphenyl contamination in the following off-site areas:
 - a. A total of five (5) locations from the swale and the unnamed tributary to the West Branch of the Red Clay Creek.
 - b. At the confluence of the unnamed tributary and the West Branch of the Red Clay Creek.
 - c. Two (2) locations upstream and two locations downstream of the confluence of the unnamed tributary and the West Branch of the Red Clay Creek.
3. Submit to EPA a site specific safety plan detailing, among other things, levels of protective clothing worn by workers on site, respiratory protection, decontamination procedures, and measures taken to limit access to work areas by nonessential personnel.

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